

## Lori F. Kaplan, Commissioner

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*(Text does not include verbatim comments)*

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### Introduction:

- Trips to Fort Wayne seem to have become regular events - speaks well for this community's interest in environmental issues.
- And meetings with your chamber are also becoming regular events.
- Meetings with your chamber, as well as chambers across the state, are an opportunity for me to communicate with our customers – you – to explain how the Indiana Department of Environmental Management is meeting the state's environmental challenges and, of course, to get feedback from you.
- It's great to be with such a diverse range of leaders from Fort Wayne's business community.
- Some of you have welcomed me into your community and businesses during several past visits.
- **But I must admit that I felt most welcomed** in early April when Rep. Win Moses and I presented a \$23.5 million State Revolving Fund check to Mayor Richard to help pay for a multi-phase wastewater treatment project in Fort Wayne.
- There's nothing like a little incentive to bring out the red carpet!

- And I also visited in early January to talk about our proposed permit fee increases. I don't recall a red carpet on that particular visit...
- Spending time in communities such as yours reminds me how important it is for state and local governments to build b partnerships so that we work together rather than separately toward a common goal of environmental stewardship.
- I have looked forward to speaking with you today because all of you play an important role in Fort Wayne's economic success and growth. AND you play an equally important role in protecting Indiana's environment.
- After being at the helm of IDEM for three years, I have seen time and again that economic growth and environmental protection easily go hand in hand – they can definitely work together to achieve what is best for all Hoosiers . . . economic opportunity and a safe, clean environment.
- I still hear on occasion that IDEM has an image problem among the business community as being an obstacle. Whenever I hear this, I hope this sentiment is based more on urban myth than reality.
- Every day at IDEM I focus on what we can do to address this urban myth and instead focus on reality: IDEM supports economic growth, but economic growth that safeguards our environment and public health while providing the best customer service possible.
- OK, with that being said, let me get to the meat and bones of my comments this morning.
- Ron Smith specifically asked me to focus on environmental legislation that emerged from the last session of the Indiana General Assembly.

- I've chosen four new laws that came out of the 963 bills introduced during this past session to discuss with you, because they directly impact Fort Wayne, Allen County, or northeast Indiana.
  - For the record, of these 963 bills, 83 bills and 5 resolution affected IDEM.
- Perhaps you are wondering which "last session" I am referencing, given the recent events in Indianapolis. I'm speaking about the regular session that began in early January and ended in mid-March.
- However, because budget issues have loomed so large in the recent past, let me start by getting some **fiscal issues** out of the way.
- As I am sure everyone knows, the Legislature did pass a budget and tax restructuring bill late on Saturday evening. While that is good news for the state in general, it will not necessarily improve things at IDEM in the near future. There is still a budget shortfall and we are still trying to figure out the implications on our homefront.
- While I can't tell you how IDEM will be impacted prospectively, I can at least tell you what our contributions and efforts towards the budget deficit have been so far.
- Most importantly, however, is that I believe we have been able to make these contributions without yet impacting the essential services we provide.
- IDEM has returned more than \$15 million to the state's general fund without compromising our core missions of protecting our air, land and water and preventing pollution.

- Of this \$15 million, \$10 million has come from dedicated funds and the \$5 million balance has come from our general fund. Our budget is approximately \$260M/biennium, and that is broken down 50/25/25.
- Cuts from dedicated funds have consisted of reductions in unobligated balances from accounts such as our Waste Tire account and our Special Fund.
  - General fund cuts have been accomplished from the tremendous team work and efforts of IDEM staff to reduce spending on things such as equipment, travel, and vehicles. We have also realized savings as a result of not filling all vacancies which occur, trimming our external contracts and virtually eliminating hard copies of publications.
  - So far, we have avoided the necessity to lay off state workers and I sincerely hope this will continue to be the case.
- As I mentioned, the agency has been able to cut its budget without jeopardizing our mission of protecting Indiana's air, land, water and preventing pollution.
- Now that I have gotten that thorny issue out of the way, let me turn my attention to the **regular** 2002 Legislative session.

#### **Looking back at the 2002 Legislative Session:**

- Past session was the short session, which by law had to end by March 14, which it did. Consequently, IDEM only had two pieces of legislation.
- HEA 1329, started out as a simple little bill to change the definition of "public water system" to be consistent with U.S. EPA's terms – we needed to replace the

terms "water supply system" and "public water supply" – with the term "public water system."

- This law changed only terminology, not meanings.
- Our most significant piece of legislation was rolled into HB 1004 – the first budget bill – which did not pass. Fee increases and WPCB authority to establish DW and Stormwater fees.
- We sought this fee increase because of a combination of factors: Inflation, lower than anticipated fee revenues and continuing and expanding program demands.
- Statutory fees were instituted in 1994 and have not been raised since that time. Statutory fees include NPDES, solid waste and hazardous waste.
  - The 1994 projected need of \$9.6 million/yr has never been realized. Last year income = \$8.3 million. Since 1994, cost of living increased for state employees by about 37%. We had proposed a 30% increase to bring income to \$11.1 million.
  - IDEM has cut costs but inflation has taken its toll.
  - Since 1994, our staff and its responsibilities have grown.
  - Despite these challenges, I'm proud to report that IDEM has nearly a 100% record for meeting permit deadlines on time.
  - Our three-year streak of on-time delivery of permits was broken in May 2002 when IDEM issued a drinking water permit two days late.
  - Unfortunately, we did not realize fee increases during session; however I have provided you all of these details as IDEM will continue to pursue fee increases and will work with the EQSC this summer in that vein.

- NOW, I can move forward and get to reviewing the environmental bills you are all anxiously waiting to hear about.
- Some of the issues are more pertinent to your geographical area and others will have a big impact on all Hoosiers, as well as Indiana's environment.
- SEA 259 is one of those bills...

### **SEA 259**

- SEA 259 affects Hoosiers all across the state; it was authored by Sens. Beverly Gard, Lindel Hume and Marvin Riegsecker and sponsored in the House by Reps. Jonathan Weinzapfel and Dave Wolkins.
- The bill began as an effort to stop IDEM rulemaking regarding new reporting requirements on Hazardous Air Pollutants.
- When all was said and done, the law was passed which would permit the Air Pollution Control Board to promulgate such rules after additional study by the EQSC and additional input by the effected community.
- Through EQSC, we will:
  - Develop a plan for the creation and funding of an effective hazardous air pollutant-monitoring program to help assess potential health risks from hazardous air pollutants and
  - Consider methods for IDEM and ISDH to collect and disseminate hazardous air pollution release information to the public
- SEA 259 directs IDEM and ISDH to develop a 5-year strategic plan based on existing data and identify any gaps between existing and needed data – to be presented to EQSC before Nov. 1, 2002.

- SEA 259 will arm state government with more information about Indiana's environment, which in turn will guide us all in making environmentally sound choices for the future.
- I was pleased to read in the Indiana Chamber's April Legislative Report that the "chamber supports those regulatory efforts that are based on sound science and meet federal standards."
- But as the adage goes, the devil is in the details but your input into this strategic plan, via the EQSC, is essential.

### **HEA 1329**

- Just as the regular session was nearing an end, HEA 1329 got passed to the surprise of many.
- HEA 1329, authored by Rep. Jonathan Weinzapfel and sponsored in the Senate by Sens. Gard and John Broden, deals with ALL administratively extended permits, with a few extra provisions regarding water permits, but that's not how the bill began.
- It began as a tool to address the respective roles of IDEM and the State Budget Agency in regard to administration of the State Revolving Fund; the same fund from which Rep. Moses and I announced the \$23.5 million loan to the city of Fort Wayne.
- But the bill wound up like the proverbial legislative kitchen sink where different concepts were tossed into it during the legislative process.
- At one time or another during the legislative process, HEA 1329:

- Addressed IDEM's and the State Budget Agency's respective roles in the SRF program,
  - Established a new, autonomous agency to handle the SRF program, and
  - Required IDEM to issue more than 100 administratively extended water discharge (NPDES) permits if requested to do so by the permittee.
- Then the bill moved into the Conference Committee, an arena where – if you're the least bit familiar with the legislative process – just about anything can, and usually does, happen.
- It was no different for HEA 1329.
- Rep. Weinzapfel and Sen. Gard, chairpersons of the House and Senate environmental committees, removed virtually all of the original SRF language and kept the wastewater permit language.
- In the last minutes of the session, and unbeknownst to IDEM, and most folks who were following this piece of legislation, the bill was expanded to include ALL statutory permits – which includes solid and hazardous waste, in addition to NPDES permits.
- Basically, this bill provides the same remedies available should IDEM fail to issue a new permit within the statutory deadlines. These remedies include:
  - Refund application fee and IDEM continues review of application
  - Refund application fee and applicant submits draft permit; and
  - Applicant pays for outside consultant to draft permit
- However, in effect, time frame to issue renewed applications could end up being considerably shorter than issuing new permits, as HEA 1329 provides that IDEM is required to issue the renewed permits PRIOR to expiration of the old permit. Example: 365 days to issue new solid waste permits/renewal ap need only be submitted 120 days prior to expiration.



- In addition to this issue, IDEM has concern over potential fiscal impact:
  - Hazardous Waste: \$175,700 (fees range from \$17,200 to 34,000/8 ext's)
  - Solid Waste: \$269,850 (\$2200 to 15,350/29 ext's) and, ironically,
  - NPDES, the genesis for all of this: \$5,600 (\$50/112)
- Because of the potentially shorter time frames to reissue permits, and the possible fiscal impact, IDEM is seriously considering whether to seek amendments during the next session.
  
- In addition to the above, 1329 creates two reporting requirements:
- IDEM is to report to the EQSC each year on the status of administratively extended NPDES permits, and
- report to EQSC by Sept. 1 of every even-numbered year regarding the distribution of money in the Environmental Management Permit Operation Fund to the NPDES, solid waste and hazardous waste programs. This also includes the requirement of an independent audit conducted on the distribution of these funds. (Another fiscal implication.)

#### **SEA 461**

- A bill of particular interest in Allen County – SEA 461 – gives the Allen County Health Department the authority to allow sewage from a dwelling to be discharged into waters of the state via an operating permit.
  
- Of course, a number of requirements would have to be met, including:
  - Allen County must form an on-site waste management district,
  - The Allen County Health Department must adopt rules for monitoring the residential disposal systems and must certify those systems, and
  - Ascertain that a valid reason exists why the dwelling cannot be connected to a sanitary sewer system.
  - As you might guess, this bill causes a great deal of angst for IDEM, ISDH and various environmental concerns.

- It came as a surprise to IDEM, because this is the first time in state history that residential discharges to waters of the state will be legal.
- We're now faced with the possibility of homeowners discharging household waste directly into the waters of the state, including:
  - the Maumee River,
  - the St. Joseph River
  - the St. Mary's River as well as
  - Other waterways and waterbodies throughout the county.
- A provision within SEA 461 requires the Indiana State Department of Health to:
  - Study alternative technologies and
  - Adopt new rules to allow the issuance of operating permits in Allen County.
- The law also directs IDEM to obtain a general permit for all dwellings in Allen County from the U.S. EPA.
- It is uncertain at this time whether the U.S. EPA will issue IDEM any such "general permit" for Allen County.
- Be watching for the opportunity to provide feedback and ideas to IDEM regarding how such a general permit should look.
- IDEM must report to the EQSC by August 1 and October 1 to update it on the progress of obtaining this general permit.

- The Indiana State Department of Health will also report to the EQSC on the progress of adopting the rules to allow Allen County to issue operating permits to residents.

## **Wetlands**

- I would be remiss if I did not touch on the topic of wetlands, as this was a very controversial issue during the past session.
- Just as we need to protect our precious lakes, rivers and streams, we must also protect our other surface waters in the form of wetlands.
- Wetlands are areas where water covers the soil or is present either at or near the surface for part or all of the year, including the growing season. A wetland must also contain certain types of soil as well as a variety of plants that grow and thrive in a wet environment.
- All three factors must be present in order for an area to be considered a wetland.
- These natural resources, in many instances, are crucial for many Hoosiers' drinking water.
- Wetlands recharge our ground water and more than 70% of Indiana residents rely on ground water for part or all of their drinking water needs.
- Geologists have shown that "isolated" wetlands in the area are actually directly connected to ground water. There is even a debate as to whether any wetlands are geologically isolated, or if in fact they are all connected to some water system in some manner.

- Wetlands are also important for flood control, filtration of pollutants, habitat and recreation.
- For years, IDEM and the federal government shared the task of protecting these wetlands. However, that all changed this past year.
- In January 2001, the U.S. Supreme Court ruled that the U.S. Army Corps of Engineers could no longer regulate certain isolated wetlands. Up until that point, IDEM deferred all wetland regulating to the Corps.
- IDEM has estimated that more than 30% of the 800,000 acres of remaining Indiana wetlands have lost federal protection.
- In response to the Supreme Court decision, IDEM announced that it would use the existing NPDES program to regulate these isolated wetlands which had previously been regulated by the Corps.
- The S Ct decision came down in the midst of our rule making to establish a state wetland rule. Therefore, we decided to include the gap-filling measure – protecting wetlands through the NPDES program – in our proposed rules. These issues were brought to, and discussed with, the pre-existing wetlands rule work group.
- The goal of the new wetland rules, which have not yet been finalized, is to provide a clear, comprehensive and consistent approach to regulating one of Indiana's most important natural resources.
- HEA 1306 was one of three wetland bills initially filed, which, much like SEA 259, was initially intended to prohibit IDEM from proceeding in rulemaking on this subject.

#### **HEA 1306:**

- The Environmental Quality Service Council (EQSC) is to:
  - Consider a rational wetland policy,
  - Recommend wetland principles and policy and
  - Recommend the appropriate role of a wetlands mitigation banking program as part of a mitigation rule.
  - Requires the EQSC to submit a report to the governor and the executive director of the Legislative Service Agency before Nov. 1, 2002.
- HEA 1306 also does the following in regard to rule making:
  - Restricts the adoption or amendment of a rule concerning the definition of "wetland" or "isolated wetland" and
  - Prohibits the enforcement of a rule promulgated after January 1, 2002, that concerns those definitions until the EQSC has submitted its final report or May 1, 2003, whichever occurs first.
- The Water Pollution Control Board has already preliminarily adopted the wetland rule.
  - Board members know that changes will occur to the proposed rule based on discussions with the EQSC this summer.
  - However, the board felt that a great deal of time and effort had gone into the rule and wanted to keep the process moving, to the extent possible, by preliminarily adopting the rule.
- The preliminarily adopted rule:

- Ensures that these resources are protected and regulated in a fair and efficient manner and
  - Provides state water quality standards specific to wetlands to protect them from harm.
- As we continue to develop this rule and work with the public and the EQSC on the issue, IDEM gladly accepts the responsibility to protect Indiana's wetlands.
- And as we look ahead, IDEM is constantly looking to the future of Indiana's environment by identifying environmental issues and attacking them with innovative and scientifically sound strategies.

### **Brownfields Funding:**

- I'm going to digress from the flow of my remarks to address whether the state budget cut backs adversely impact the Brownfields program.
  - Ron Smith asked me to address this issue, so there must be an interest on the audience's part in this program.
- And I don't fault your interest; rather, I encourage it because brownfield development is good for business and good for the environment.
- Brownfields are abandoned or under-used industrial sites that have real or perceived environmental issues that stymie their redevelopment.
- Fort Wayne has successfully redeveloped three sites, which received direct state assistance totaling about \$540,000, including:
  - Bowser Pump Plant (\$500,000 for site assessment),
  - Myers Petro Service (\$32,000 for site assessment) and
  - George Jones Auto Repair (\$8,000 for technical oversight work)
- Also, the city of Fort Wayne is one of the U.S. EPA's Brownfields Assessment Demonstration Pilot projects and received \$200,000.

- Currently, the Brownfields program is funded solely by federal EPA funds.
- IDEM does have a \$350,000 Brownfields Cleanup Revolving Loan Fund (BCRLF) pilot grant – which was recently increased to \$1 M – from the U.S. EPA to provide federal loan funds to eligible private and public entities for non-time critical removal activities.
- Also, recent federal brownfields legislation authorized \$200 million for site specific activities, though President Bush only appropriated \$150 million over 5 years.
- Suffice to say that federal environmental officials, as well as state and local officials, see the clear advantages of Brownfield redevelopment and support, at least for now, is still available.

#### **Conclusion:**

- Obviously, we could discuss and debate issues coming out of this session of the General Assembly for the entire day. However, time does not allow such a lengthy discussion.
- I've tried to highlight the new laws that I thought most directly affected you as business owners/leaders or residents of Allen County.
- Again, I want to encourage you to continue to work toward our goals of protecting Indiana's environment and encouraging economic growth.
- I take a great deal of personal pride that the O'Bannon/Kernan administration and IDEM are committed to working with local governments to build b partnerships so that we can take the necessary steps to achieve our common goals.

- Thank you for your time and thank you for everything you do to help protect and preserve all that is great about Indiana.